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preme Court has adopted, therefore, as the opinion points out, "gives effect to the amendment and interprets it in consonance with the spirit and purpose of the Bankruptcy Act."

DECREE FOR SPECIFIC PERFORMANCE AS A WARRANTY DEED. — A recent Kansas case shows an interesting and novel application of the statutes permitting equitable action *in rem*. The court, having personal jurisdiction of the defendant, decreed specific performance of a contract for the sale of land within the state, under a statute¹ giving such a decree, if not obeyed, the same effect as the deed which should have been executed in accordance therewith. No deed was executed, but the vendor was held liable on a warranty against incumbrances on the ground that the decree had the same effect as the warranty deed the defendant should have given. *Paris v. Golden*, 153 Pac. 528.²

At common law, it was well established that equity acted *in personam*, on the conscience of the defendant, and could enforce its decree only by contempt proceedings. But the growing prejudice against imprisonment for contempt, the obvious helplessness of the court if the defendant proved contumacious,³ and the frequent failure of justice resulting from the difficulty of getting personal jurisdiction over the defendant, led to the adoption of statutes, in England, and almost all the states, giving the courts of equity certain powers to act *in rem*, on service by publication.⁴ Such statutes, so far as they concern the specific performance of a contract for the sale of land, are of two types: either the court orders a trustee to make the deed, or the decree itself will operate as a conveyance; in many states the court may use either method in its discretion.⁵ The courts of California have reached the same result without the aid of statutes.⁶ A corresponding development has taken place in the Civil Law.⁷ The French Code provides that the person to whom an obligation is due may obtain the authority of the court to carry out the undertaking at the cost of the obligor.⁸ Similar provisions are found in the German Code;⁹ and, moreover, when the obligor is bound to make declaration of

¹ KAN. GEN. STAT., 1909, § 5993. "When a judgment shall be rendered for a conveyance . . . and the party against whom the judgment shall be rendered does not comply therewith by the time appointed, such judgment shall have the same operation and effect, and be as available, as if the conveyance . . . had been executed conformably to such judgment; or the court may order such conveyance to be executed in the first instance by the sheriff."

² See RECENT CASES, p. 782.

³ See REPORT OF ROYAL COMMISSION ON CHANCERY PRACTICE, I, 8, 107.

⁴ See HUSTON, ENFORCEMENT OF DECREES IN EQUITY, 13-25.

⁵ See statutes collected in the appendix to Mr. Huston's book, *supra*. The position of the federal courts is treated in HUSTON, 25-38. There is no federal statute covering the point, and, as it is a question of procedure and not of substantive law, state statutes would not ordinarily control the federal courts. But the federal courts, realizing the defects of the procedure *in personam*, are inclined to take advantage of the statute of the state in which they are sitting. *Single v. Scott Paper Mfg. Co.*, 55 Fed. 553; *Deck v. Whitman*, 96 Fed. 873.

⁶ *Rourke v. McLaughlin*, 38 Cal. 196; *Wait v. Kern River Mining, etc. Co.*, 157 Cal. 16, 106 Pac. 98.

⁷ See HUSTON, ENFORCEMENT OF DECREES IN EQUITY, 39-53.

⁸ FRENCH CIVIL CODE, § 1144.

⁹ ZIVILPROZESSORDNUNG, § 883-88.

will, that declaration will be considered as made as soon as the decree has become final.¹⁰ There is an obvious analogy here to our statutes making a decree pass title, but the German provision has a much more comprehensive application.

The principal case, however, seems a logical step toward a broader application of our statutes. Kansas holds with the majority of states that an agreement to convey implies an obligation to give a warranty deed.¹¹ Thus, a deed executed in accordance with the court's decree would be a warranty deed. Where a conveyance is made in different terms from the decree, the decree controls;¹² and, if no conveyance is made, since the statute gives to the decree the same effect as a proper conveyance would have had, the decree will operate as a warranty deed. In other words, the court has conclusively determined that the defendant has a duty to enter into an agreement of warranty. By force of the statute, then, the result is the same as if he had entered into that agreement. This method seems entirely analogous to that prescribed in § 894 of the German Code, quoted above.¹³

It is clear, however, that this result could not be reached unless the decree were based on personal jurisdiction of the defendant, for a court having jurisdiction only *in rem* can in no way adjudicate the personal obligations of the parties, or impose personal liability upon them.¹⁴ Thus, a judgment *quasi in rem* is not conclusive evidence of the existence of the debt in a personal suit in another jurisdiction, in spite of the full faith and credit clause, for there was no jurisdiction to pass upon the defendant's personal obligations.¹⁵ Similarly, in divorce proceedings, a court having personal jurisdiction over the parties may decree the payment of alimony, and the decree will be a conclusive adjudication of the existence of a personal obligation to pay, upon which suit may be brought anywhere,¹⁶ but a court having only jurisdiction *in rem* cannot decree the payment of alimony,¹⁷ although it may appropriate property within the state to that purpose.¹⁸ These cases, it is submitted, are strictly analogous to the principal case; and, since the court had personal jurisdiction, the result is entirely correct.

¹⁰ ZIVILPROZESSORDNUNG, § 894. And see 22 HARV. L. REV. 161, 179. Cf. Goldstein v. Curtis, 63 N. J. Eq. 454, 59 Atl. 639, where it was held, that when a decree operates as a conveyance, a married woman ordered to make a conveyance need not include therein the statutory acknowledgment that the conveyance was her voluntary act.

¹¹ Putnam Investment Co. v. King, 96 Kan. 109, 150 Pac. 559. Accord, Whitworth v. Pool, 96 S. W. 880 (Ky.); McDonald v. Minnick, 147 Ill. 651, 35 N. E. 367. Contra, Kyle v. Kavanaugh, 103 Mass. 356; Emerick v. Hackett, 192 N. Y. 162, 84 N. E. 805.

¹² See Price v. Sisson, 13 N. J. Eq. 168, 172.

¹³ See note 10, *supra*.

¹⁴ Worthing v. Lee, 61 Md. 530.

¹⁵ Price v. Hickok, 39 Vt. 292; McVicker v. Beedy, 31 Me. 314.

¹⁶ Johnson v. Johnson, 31 Neb. 385, 47 N. W. 1115; Gray v. Gray, 143 N. Y. 354, 38 N. E. 301; Sanford v. Sanford, 5 Day (Conn.) 353.

A court cannot, however, charge alimony on foreign lands and an order to convey such land as alimony will not be enforced at the *situs*. Fall v. Fall, 75 Neb. 104, 113 N. W. 175; Fall v. Eastin, 215 U. S. 1. See 21 HARV. L. REV. 210; 25 HARV. L. REV. 653.

¹⁷ Hekking v. Pfaff, 91 Fed. 60; Rea v. Rea, 123 Ia. 241, 98 N. W. 787; Proctor v. Proctor, 215 Ill. 275, 74 N. E. 145. See Baker v. Baker, 136 Cal. 302, 68 Pac. 971.

¹⁸ Bailey v. Bailey, 127 N. C. 474, 37 S. E. 502. See Rea v. Rea, 123 Ia. 241, 98 N. W. 787.